

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

**ORDER ADOPTING AS MODIFIED MAGISTRATE JUDGE'S
FINDINGS AND RECOMMENDATION**

On April 14, 2011, a document styled "Findings and Recommendation to Deny Application to Proceed without Prepayment of Fees, Dismiss Complaint without Prejudice, and Grant Leave to Amend" ("F&R") was filed and served on all parties. (ECF No. 5.) No objections have been filed by any party. The F&R is adopted as the opinion and order of this Court, with one modification. See 28 U.S.C. § 636(b)(1)(C); LR74.2.

Rather than dismissing the complaint without prejudice at this time, the Court grants Plaintiff leave to file an amended complaint correcting the deficiencies in his current complaint, as detailed in the F&R. See Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) ("Unless it is absolutely clear that no amendment can cure the defect, . . . a pro se litigant is entitled to notice of the complaint's deficiencies and an

opportunity to amend prior to dismissal of the action.")
(emphasis added); see also Lopez v. Smith, 203 F.3d 1122, 1126
(9th Cir. 2000) (en banc).

Failure to file an amended complaint as instructed by Friday, June 3, 2011, shall result in AUTOMATIC DISMISSAL of this action for failure to state a claim.^{1/}

IT IS SO ORDERED.

DATED: Honolulu, Hawai'i, May 4, 2011.



Alan C. Kay
Alan C. Kay
Sr. United States District Judge

Campbell v. City of Hilo, Civ No. 11-00223 ACK-RLP: Order Adopting as Modified Magistrate Judge's Findings and Recommendation

^{1/} This order does not affect Plaintiff's second application to proceed without prepayment of fees, (ECF No. 7), dated April 18, 2011. In consideration of Plaintiff's pro se status, the magistrate judge shall construe this second application as having been filed within thirty days of this order, and shall consider it in light of the amended complaint, if any, that Plaintiff files by June 3, 2011. At this time, Plaintiff need not pay the filing fee or file a third application to proceed without prepayment of fees.